IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21048 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NIANJANBHAI GIRJASHANKAR RAJGORE & 6 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR NILESH PANDYA for MR AMIT C NANAVATI for Petitioner(s) : 1 - 7.
MR SP HASURKAR A.G.P. for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

and

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 23/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. Rule. Mr. S.P. Hasurkar learned A.G.P., waives service of rule on behalf of the respondents. With the consent of the parties the matter is taken up

for final hearing today.

2. In this petition, the petitioners have challenged the order made by respondent no. 2 rejecting the application filed by the petitioner under Section 28A of the Land Acquisition Act [hereinafter referred to as "the Act"], on the ground that it was filed after the expiry of the prescribed period of limitation. In the opinion of respondent no. 2, the application ought to have been filed within 90 days. By computing the period of limitation, 90 days would get over on 10th January, 2001. However, application had been filed on 15th January, 2001 and, therefore, it was beyond the period of limitation prescribed under the Act.

3. We have perused the record of the petition. We have also heard Mr. Nilesh Pandya for Mr. Amit Nanavaty learned advocate appearing for the petitioners and Mr. S.P. Hasurkar learned A.G.P., appearing for the respondents. It appears that the lands of the petitioners which are situated at village Dharavana, Taluka Harij, District Patan, were acquired under the provisions of the Act and ultimately, at the end of the acquisition proceedings, the amount of compensation was determined at Re.1/- per square meter by the Special Land Acquisition Officer i.e. Respondent no. 2. It further appears that the petitioners did not make any application under Section 18(2) of the Act to the Collector to refer the matter to the District Court for enhancing the rate of compensation, but other similarly situated land owners preferred such application and their cases were referred to the District Court. The learned Extra Assistant Judge, Mehsana, decided those reference cases and granted additional compensation to the claimants of those cases at Rs.9.12 per sq. meter. The learned Judge made the award on 30th September, 2000. The petitioners on learning about the award made by the learned Judge, made an application for obtaining certified copy on 4th December, 2000 and the same was ready for

delivery on 16th December, 2000. According to the petitioners, the application was required to be filed on or before 13th January, 2001, but 13th and 14th January, 2001, being holidays it was filed on 15th January, 2001.

4. According to Mr. Pandya, the calculation made by respondent no. 2 is erroneous. According to him, the application under Section 28A of the Act ought to have been filed by the petitioners on or before 13th January, 2001, but 13th and 14th January, 2001, being holidays it was filed on 15th January, 2001. In his submission, the application was within time and, therefore, the impugned order deserves to be quashed and set aside. As against that Mr. S.P. Hasurkar learned A.G.P., has submitted that on the basis of the dates narrated in the petition, if the computation of limitation is made, the last date of filing the application would be 12th January, 2001 and, therefore, the petitioners cannot have the benefit of exclusion of two subsequent holidays i.e. 13th and 14th January, 2001. He has, therefore, submitted that the order of respondent no. 2 is just and proper and it is not required to be interfered with. Mr Pandya has also made submission that the provisions of Section 28A of the Act require application to be filed within a period of three months from the date of judgment and, therefore, even if three months are computed on the basis of the dates narrated in the petition, the application would be well within time. Lastly Mr. Pandya has submitted that even if the calculation made by respondent no. 2 is accepted, there is delay of only one day which can be condoned. Mr. Pandya in support of his submission has also placed reliance on the decision of this Court.

5. We have carefully considered the submission of the learned advocates. Mr. Pandya has placed reliance on the decision of the Division Bench of this Court rendered in the case of **Ajanbhai Ladhabhai Patel v.**

State of Gujarat in Special Civil Application No. 17839 of 2003 dated 24th March, 2004. The said decision is in respect of the cognate matter of the present case. We have also perused the original petition of that case, wherein details regarding various dates relevant for computing the period of limitation are given. It appears that the details of dates of both the cases are identical. The Division Bench in the said decision held as under :-

> "It could very well be visualised from the plain perusal of the aforesaid definition that the last day of the limitation when falls on any holiday or non-working or closed day, then the first working day will have to be considered for the purpose of computation of the limitation. Keeping in mind this aspect about which there is no dispute, the application under Section 28A came to be filed, on the next working day, i.e., on 15th January, 2001. In our opinion, therefore taking into account the factual scenario and the legal profile, the application is required to be allowed quashing and setting aside the impugned order of the Special Land Acquisition Officer as it suffers from patent illegality and serious misinterpretation. The petition therefore, shall stand allowed. Rule made absolute, however leaving the parties to bear their own costs. Direct Service is permitted."

6. We have also taken assistance of the officers of this Court who are in charge of the computation of the period of limitation of the matters, which are being filed in this Court. They have also computed the period of limitation and calculation has been submitted to us, which shows that the application under Section 28A has been filed within the period of limitation. In view of the same, the first contention of Mr. Pandya is required to be accepted. In our opinion also, the present application under Section 28A of the Act has been filed before respondent no. 2 within the prescribed period of limitation and respondent no. 2 has erroneously rejected it on the ground that it has been filed after the expiry of the period of limitation. Hence the impugned order dated 21st

March, 2005, which is annexed at annexure-D to the petition, made by respondent no. 2 is quashed and set aside. He is now directed to consider the application on its merits and decide the same in accordance with law as well as on the facts and circumstances of the case. Since Mr. Pandya's first contention is acceptable to us, we do not propose to deal with other two contentions.

7. In view of the aforesaid the petition is allowed. Rule is made absolute.

[Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

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